

LEGISLATURE OF NEBRASKA
NINETY-NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 457

Introduced by Cornett, 45; Aguilar, 35; Connealy, 16; Flood, 19;
Kruse, 13; Schimek, 27; Stuthman, 22

Read first time January 13, 2005

Committee: Judiciary

A BILL

1 FOR AN ACT relating to driving under the influence; to amend
2 section 60-6,197.03, Reissue Revised Statutes of
3 Nebraska, and section 28-106, Revised Statutes
4 Supplement, 2004; to change penalties relating to driving
5 under the influence; to harmonize provisions; and to
6 repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-106, Revised Statutes Supplement,
2 2004, is amended to read:

28-106. (1) For purposes of the Nebraska Criminal Code and any statute passed by the Legislature after the date of passage of the code, misdemeanors are divided into seven classes which are distinguished from one another by the following penalties which are authorized upon conviction:

8 Class I misdemeanor..... Maximum -- not more than one year
9 imprisonment, or one thousand dollars
10 fine, or both

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11                                     Minimum -- none
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12 Class II misdemeanor..... Maximum -- six months imprisonment, or
13 one thousand dollars fine, or both

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14                                     Minimum -- none
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15 Class III misdemeanor..... Maximum -- three months imprisonment,
16 or five hundred dollars fine, or both

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17                                     Minimum -- none
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18 Class IIIA misdemeanor.... Maximum -- seven days imprisonment,
19 five hundred dollars fine, or both

20 Minimum -- none

21 Class IV misdemeanor..... Maximum -- no imprisonment, five
22 hundred dollars fine

23 Minimum -- one hundred dollars fine

24 Class V misdemeanor..... Maximum -- no imprisonment, one hundred
25 dollars fine

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26                                     Minimum -- none
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27 Class W misdemeanor..... Driving while intoxicated — implied
28 consent refusal

1 Class W misdemeanor..... Driving under the influence or implied
2 consent
3 First conviction
4 Maximum -- sixty days imprisonment and
5 five hundred dollars fine
6 Mandatory minimum -- seven days
7 imprisonment and four hundred dollars
8 fine
9 Second conviction
10 ~~Maximum -- ninety days imprisonment and~~
11 ~~five hundred dollars fine~~
12 Maximum -- ninety days imprisonment and
13 one thousand dollars fine
14 Mandatory minimum -- thirty days
15 imprisonment and ~~five hundred~~ one
16 thousand dollars fine
17 Third conviction
18 Maximum -- one year imprisonment and
19 ~~six~~ one thousand two hundred dollars
20 fine
21 Mandatory minimum -- ninety days
22 imprisonment and ~~six~~ one thousand two
23 hundred dollars fine

24 (2) Sentences of imprisonment in misdemeanor cases shall
25 be served in the county jail, except that in the following
26 circumstances the court may, in its discretion, order that such
27 sentences be served in institutions under the jurisdiction of the
28 Department of Correctional Services:

1 (a) If the sentence is for a term of one year upon
2 conviction of a Class I misdemeanor;

3 (b) If the sentence is to be served concurrently or
4 consecutively with a term for conviction of a felony; or

5 (c) If the Department of Correctional Services has
6 certified as provided in section 28-105 as to the availability of
7 facilities and programs for short-term prisoners and the sentence
8 is for a term of six months or more.

9 Sec. 2. Section 60-6,197.03, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 60-6,197.03. Any person convicted of a violation of
12 section 60-6,196 or 60-6,197 shall be punished as follows:

13 (1) If such person has not had a prior conviction, such
14 person shall be guilty of a Class W misdemeanor, and the court
15 shall, as part of the judgment of conviction, order such person not
16 to drive any motor vehicle for any purpose for a period of six
17 months from the date ordered by the court and shall order that the
18 operator's license of such person be revoked for a like period.
19 Such revocation shall be administered upon sentencing, upon final
20 judgment of any appeal or review, or upon the date that any
21 probation is revoked.

22 If the court places such person on probation or suspends
23 the sentence for any reason, the court shall, as one of the
24 conditions of probation or sentence suspension, order such person
25 not to drive any motor vehicle for any purpose for a period of
26 sixty days from the date ordered by the court unless otherwise
27 authorized by an order issued pursuant to section 60-6,211.05, and
28 such order of probation or sentence suspension shall also include,

1 as one of its conditions, the payment of a four-hundred-dollar
2 fine;

3 (2) If such person has had one prior conviction, such
4 person shall be guilty of a Class W misdemeanor, and the court
5 shall, as part of the judgment of conviction, order such person not
6 to drive any motor vehicle for any purpose for a period of one year
7 from the date ordered by the court, shall order that the operator's
8 license of such person be revoked for a like period, and shall
9 issue an order pursuant to section 60-6,197.01 with respect to all
10 motor vehicles owned by such person. Such orders shall be
11 administered upon sentencing, upon final judgment of any appeal or
12 review, or upon the date that any probation is revoked.

13 If the court places such person on probation or suspends
14 the sentence for any reason, the court shall, as one of the
15 conditions of probation or sentence suspension, order such person
16 not to drive any motor vehicle for any purpose for a period of one
17 year from the date ordered by the court unless otherwise authorized
18 by an order issued pursuant to section 60-6,211.05 and shall issue
19 an order pursuant to section 60-6,197.01 with respect to all motor
20 vehicles owned by such person, and such order of probation or
21 sentence suspension shall also include, as conditions, the payment
22 of a ~~five-hundred-dollar~~ one-thousand-dollar fine and either
23 confinement in the city or county jail for five days or the
24 imposition of not less than two hundred forty hours of community
25 service;

26 (3) If such person has had two prior convictions, such
27 person shall be guilty of a Class W misdemeanor, and the court
28 shall, as part of the judgment of conviction, order such person not

1 to drive any motor vehicle for any purpose for a period of fifteen
2 years from the date ordered by the court, shall order that the
3 operator's license of such person be revoked for a like period, and
4 shall issue an order pursuant to section 60-6,197.01 with respect
5 to all motor vehicles owned by such person. Such orders shall be
6 administered upon sentencing, upon final judgment of any appeal or
7 review, or upon the date that any probation is revoked.

8 If the court places such person on probation or suspends
9 the sentence for any reason, the court shall, as one of the
10 conditions of probation or sentence suspension, order such person
11 not to drive any motor vehicle for any purpose for a period of one
12 year from the date ordered by the court and shall order that the
13 operator's license of such person be suspended for a like period
14 unless otherwise authorized by an order issued pursuant to section
15 60-6,211.05 and shall issue an order pursuant to section
16 60-6,197.01 with respect to all motor vehicles owned by such
17 person, and such order of probation or sentence suspension shall
18 also include, as conditions, the payment of a ~~six-hundred-dollar~~
19 one-thousand-two-hundred-dollar fine and either confinement in the
20 city or county jail for ten days or the imposition of not less than
21 four hundred eighty hours of community service; and

22 (4) If such person has had three or more prior
23 convictions, such person shall be guilty of a Class IV felony, and
24 the court shall, as part of the judgment of conviction, order such
25 person not to drive any motor vehicle for any purpose for a period
26 of fifteen years from the date ordered by the court, shall order
27 that the operator's license of such person be revoked for a like
28 period, and shall issue an order pursuant to section 60-6,197.01

1 with respect to all motor vehicles owned by such person. Such
2 orders shall be administered upon sentencing, upon final judgment
3 of any appeal or review, or upon the date that any probation is
4 revoked. The court shall also sentence such person to serve at
5 least ten days' imprisonment in the city or county jail or an adult
6 correctional facility.

7 If the court places such person on probation or suspends
8 the sentence for any reason, the court shall, as one of the
9 conditions of probation or sentence suspension, order such person
10 not to drive any motor vehicle for any purpose for a period of one
11 year from the date ordered by the court and shall order that the
12 operator's license of such person be suspended for a like period
13 unless otherwise authorized by an order issued pursuant to section
14 60-6,211.05 and shall issue an order pursuant to section
15 60-6,197.01 with respect to all motor vehicles owned by such
16 person, and such order of probation or sentence suspension shall
17 also include, as conditions, the payment of a ~~one-thousand-dollar~~
18 one-thousand-five-hundred-dollar fine and either confinement in the
19 city or county jail for ten days or the imposition of not less than
20 four hundred eighty hours of community service.

21 Sec. 3. Original section 60-6,197.03, Reissue Revised
22 Statutes of Nebraska, and section 28-106, Revised Statutes
23 Supplement, 2004, are repealed.